

October 29, 2009

TO: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

FROM: Wendy J. Frankel
Director, Office 8
Antidumping and Countervailing Duty Operations

RE: Issues and Decision Memorandum for the Final Results of the Expedited
Sunset Review of the Antidumping Duty Order on Tetrahydrofurfuryl
Alcohol from the People's Republic of China

SUMMARY

We have analyzed the substantive response of the domestic interested party in the sunset review of the antidumping duty order on tetrahydrofurfuryl alcohol ("THFA") from the People's Republic of China ("PRC").¹ We recommend that you approve the positions we describe in this memorandum. Below is a complete list of issues in this sunset review for which we received a substantive response:

1. Likelihood of continuation or recurrence of dumping; and
2. Magnitude of the dumping margin likely to prevail.

HISTORY OF THE ORDER

On June 18, 2004, the Department of Commerce ("Department") published the final determination in the investigation of THFA from the PRC. *See Final Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol From the People's Republic of China*, 69 FR 34130 (June 18, 2004). On August 4, 2004, the United States International Trade Commission ("ITC") issued its affirmative injury determination in the investigation. *See Tetrahydrofurfuryl Alcohol From China*, 69 FR 47178 (August 4, 2004).

¹ The domestic interested party in this sunset review is Penn A Kem LLC (formally, Penn Specialty Chemicals) ("PAK"), the sole producer of TFHA in the United States and the petitioner in the antidumping duty investigation concerning imports of TFHA from the PRC. *See Notice of Initiation of Antidumping Duty Investigation: Tetrahydrofurfuryl Alcohol from the People's Republic of China*, 68 FR 42686, 42687 (July 18, 2003).

Thereafter, the Department issued the antidumping duty order on THFA from the PRC. *See Notice of Antidumping Duty Order: Tetrahydrofurfuryl Alcohol From The People's Republic of China*, 69 FR 47911 (August 6, 2004) (“*Order*”). The calculated margins set forth in the *Order* were 136.86 percent for Qingdao Wenken (F.T.Z.) Trading Co., Ltd. and a PRC-wide rate of 136.86 percent. There have been no administrative reviews since issuance of the *Order*. There have been no related findings or rulings (*e.g.*, changed circumstances review, scope ruling, duty absorption review, *etc.*) since issuance of the *Order*. The *Order* remains in effect for all exporters and exporters/producers of subject merchandise.

BACKGROUND

On July 1, 2009, the Department initiated a sunset review of the *Order* pursuant to section 751(c) of the Tariff Act of 1930, as amended (“*Act*”). *See Initiation of Five-Year (“Sunset”) Review*, 74 FR 31412 (July 1, 2009) (“*Sunset Initiation*”). On July 14, 2009, the Department received a timely notice of intent to participate in the sunset review from PAK, pursuant to 19 C.F.R. 351.218(d)(1)(i). In accordance with 19 C.F.R. 351.218(d)(1)(ii)(A), PAK claimed interested party status under section 771(9)(C) of the Act as a producer of the domestic like product. On July 14, 2009, PAK filed a substantive response in the sunset review within the 30-day deadline, as specified in 19 C.F.R. 351.218(d)(3)(i). The Department did not receive a substantive response from any respondent interested party in the sunset review. On August 20, 2009, the Department made its adequacy determination in the sunset review finding that the Department did not receive a substantive response from any respondent interested party. *See* the Department’s Memorandum regarding: Conduct of Expedited Sunset Reviews, dated August 20, 2009. Based on the lack of an adequate response in the sunset review from any respondent party, the Department is conducting an expedited (120-day) sunset review consistent with section 751(c)(3)(B) of the Act and 19 C.F.R. 351.218(e)(1)(ii)(C)(2). *See also Procedures for Conducting Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516, 13519 (March 20, 1998) (the Department normally will conduct an expedited sunset review where respondent interested parties provide an inadequate response). Our analysis of PAK’s comments submitted in their substantive response is set forth in the “Discussion of the Issues” section, *infra*.

DISCUSSION OF THE ISSUES

In accordance with section 751(c)(1) of the Act, the Department conducted a sunset review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these determinations, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before, and the period after, the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act states that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Below we address the comments made by the domestic interested parties in this proceeding.

1. Likelihood of continuation or recurrence of dumping

Interested Party Comments

PAK asserts that the record of this proceeding demonstrates that following the issuance of the order, THFA import volumes ceased or declined significantly. PAK contends that Chinese producers have not shipped to the United States since the issuance of the *Order*, even though there is capacity to produce THFA in the PRC, because these PRC producers cannot do so without dumping.

PAK contends that based on the factors used by the Department to evaluate the likelihood of resumed dumping² that revocation of the order on THFA would likely lead to continuation or recurrence of dumping. PAK asserts that the antidumping investigation and subsequent entry of an antidumping duty order had an immediate impact on imports of THFA from the PRC. PAK contends that the record of imports following the entry of the *Order* clearly reflects two of the three circumstances outlined in *Policy Bulletin 98:3*: (i) imports of the subject merchandise ceased after the issuance of the order; and (ii) dumping was eliminated after the issuance of the order, and import volumes for subject merchandise declined significantly. *Id.*

PAK asserts that U.S. imports of THFA from the PRC existed in the three years preceding the initiation of antidumping proceedings (2001 through 2003) and then ceased following the entry of the *Order* in 2004. Specifically, PAK states that import data indicated that 413 thousand pounds of THFA was imported into the United States from the PRC in 2001, followed by 593 thousand pounds in 2002, and 532 thousand pounds in 2003.³ In support of its assertions, PAK provided (i) excerpts from Table IV-2 entitled, “THFA: U.S. imports from China, 2001-03, January-March 2003, and January-March 2004” found in the ITC’s publication 3709 entitled, “Tetrahydrofurfuryl Alcohol from China, Investigation No. 731-TA-1046 (Final), (July 2004),⁴ (ii) customs data for the periods 2005 through 2008 collected under the Continued Dumping and Subsidy Act of 2000,⁵ and (iii) U.S. import data from ITC’s DataWeb system.⁶

In addition, PAK notes that there have been no administrative reviews requested since the *Order* was issued in 2004. PAK asserts that THFA import volumes ceased or declined

² PAK states that the Department “normally will determine” that dumping will continue or resume when any of the following three circumstances apply: (i) dumping continued at any level above *de minimis* after the issuance of the order; (ii) imports of the subject merchandise ceased after the issuance of the order; or (iii) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly. *See Policies Regarding the Conduct of Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998) (“*Policy Bulletin 98:3*”).

³ *See* PAK’s July 29, 2009, submission regarding, “Sunset Review of the Antidumping Duty Order on Tetrahydrofurfuryl Alcohol from the People’s Republic of China; Substantive Response to Notice of Initiation,” at section F.3 (“PAK Response”).

⁴ *See Id.*

⁵ *See* Pak Response at Exhibit A.

⁶ *See* Pak Response at Exhibit B.

significantly and the lack of participation in administrative reviews clearly indicates that Chinese exporters of THFA cannot export to the United States without dumping.

PAK concludes that the facts it has presented regarding imports and the *Order* satisfy the criteria for an affirmative determination, as laid out in the Department's *Policy Bulletin 98:3*. Therefore, PAK asserts, the Department should determine that revocation of the *Order* is likely to lead to continuation or recurrence of dumping of THFA from the PRC.

Department Position

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"),⁷ the Department normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where: (a) dumping continued at any level above *de minimis* after the issuance of the order; (b) imports of the subject merchandise ceased after the issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.⁸ In this case, the Department found dumping at above *de minimis* levels in the original antidumping duty investigation of THFA in the PRC. *See* PAK Response at section I. Since the issuance of the antidumping duty order on THFA from the PRC, the Department has not conducted an administrative review, because no administrative review was requested. *See above*, at History of the Order section. Thus, dumping margins and cash deposits rates at or above *de minimis* levels remain in effect for PRC companies. *See below*, at Final Results of Review section. These margins provide the best evidence of dumping behavior of these companies and there is no evidence that indicates dumping has ceased. Accordingly, revocation of this antidumping duty order is likely to lead to continuation or recurrence of dumping.

Separately, pursuant to 752(c)(1)(B) of the Act, the Department considered the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order. Import statistics on the subject merchandise cited by PAK and those examined by the Department demonstrate that in some years imports ceased and in other years the level of imports declined significantly from pre-order levels after the issuance of the order.⁹

⁷ *See, e.g.*, SAA accompanying the URAA, H.R. Doc. No. 103-316, vol. 1, 889 (1994); House Report, H. Rep. No. 103-826, pt. 1 (1994); and Senate Report, S. Rep. No. 103-412 (1994).

⁸ *See, e.g.*, *Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of Expedited Sunset Review of Antidumping Duty Order*, 74 FR 10239 (March 10, 2009), and accompanying Issues and Decision Memorandum at Comment 1; *see also*, *Pure Magnesium in Granular Form from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 5417 (February 6, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

⁹ *See* PAK Response at section F.3; *see also* ITC Dataweb statistics at Attached I of this memorandum.

2. Magnitude of the Margins Likely to Prevail

Interested Party Comments

PAK argues that, consistent with the Department's normal practice, the Department should find that the magnitude of the margin of dumping that is likely to prevail is identical to the margin determined to exist in the original investigation. *See* PAK Response at section G.

Department Position

Section 752(c)(3) of the Act provides that the administering authority shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Normally, the Department will select a margin from the final determination in the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place.¹⁰ Furthermore, pursuant to section 752(c)(4)(A), a dumping margin of "zero or *de minimis* shall not by itself require" that the Department determine that revocation of an antidumping duty order would not be likely to lead to a continuation or recurrence of sales at less than fair value. The Department continues to find that the margin calculated in the original investigation is the best indication of the margins likely to prevail if the order were revoked, because it is the only calculated rate without the discipline of an order in place.

Therefore, consistent with section 752(c)(3) and section 752(c)(4)(A) of the Act, the Department will report to the ITC the corresponding individual company rates and the PRC-wide rate from the original investigation as noted in the "Final Results of Review" section, below.

Final Results of Review

The Department determines that revocation of the antidumping duty order on THFA from the PRC would be likely to lead to continuation or recurrence of dumping. The Department also determines that the dumping margins likely to prevail if the order was revoked are as follows:

Manufacturers/Exporters/Producers	Weighted-Average Margin (percent)
Qingdao Wenken (F.T.Z.) Trading Co., Ltd.	136.86
PRC-wide Entity	136.86

¹⁰ *See Persulfates from the People's Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 73 FR 11868 (March 5, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

Recommendation

Based on our analysis of the substantive response received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of this sunset review in the *Federal Register*.

John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

Date

Attachment

Attachment I